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phone conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 MAUVAREEN BEVERLEY,

4 Plaintiff,

5 v.

18 Civ. 8486 (ER)
Remote Proceeding

6 NEW YORK CITY HEALTH AND
7 HOSPITALS CORP., et al.

8 Defendants.
-----x

9 New York, N.Y.
10 November 10, 2022
11 4:30 p.m.

12 Before:

13 HON. EDGARDO RAMOS,

14 U.S. District Judge

15 APPEARANCES

16 LAW OFFICE OF SANDRA D. PARKER
17 Attorneys for Plaintiff
BY: SANDRA D. PARKER

18 SYLVIA HINDS-RADIX
19 Corporation Counsel for the City of New York
BY: DONALD C. SULLIVAN
20 Assistant Corporation Counsel

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(Case called; The Court and all parties appearing telephonically)

THE DEPUTY CLERK: Counsel, please state your name for the record, starting with counsel for plaintiff.

MS. PARKER: Good afternoon, your Honor. This is Sandra Parker for the plaintiff.

THE DEPUTY CLERK: Counsel for defendant.

MR. SULLIVAN: Good afternoon, your Honor. This is Donald Sullivan from the Office of the Corporation Counsel, the defendants.

THE COURT: Good afternoon to you all, this matter is on for a conference. I note for the record that it is being conducted by telephone.

Ms. Parker, let me begin with you. It appears as though the reason for this conference may be moot but maybe not so why don't you tell me what the status is.

MS. PARKER: Well, the status, the issue has not been resolved, your Honor. I have had representations made with regard to producing discovery. You will note that Mr. Sullivan is new counsel, I believe that his colleague is attending to another matter so he just came on board a few days ago, and there has been no modification of the position that they've taken with regard to the issues that I raise in my pre-motion letter as indicated in the letter of Ms. Katsaros that the pre-motion should not go forward and that we should work on

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1 things and raise issues about modifying the schedule at some
2 later date.

3 The reason it has not been resolved, your Honor, is
4 because my understanding is, and Mr. Sullivan has not indicated
5 otherwise to me during any of our discussions, that they still
6 made their position that they want to produce the documents and
7 information, possibly by November 15. I haven't gotten a firm
8 date on that but that's a date that's been put out. Assuming
9 for the moment that that date they will keep as a deadline and
10 produce documents, what has happened is the deadline for
11 joinder of issues and amending the complaint has expired, it
12 expired during the time frame when I would have had those
13 documents and information and possibly provided me with
14 whatever information might have been useful to either join
15 additional parties or amend the complaint. In addition to
16 that, there are other discovery deadlines that have passed.
17 For example, for the second set of interrogatories, again, had
18 I had those had documents and information I would have been
19 able to use them to fashion additional interrogatory responses
20 or at least make the determination whether that approach would
21 have been feasible. Next you have the November 18th request to
22 admit deadline and you have the expert deadline on November
23 23rd.

24 So, to a certain extent it has not been resolved in
25 that we need your Honor's consent and approval with regard to

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1 anything that we propose. I have been proposing that we come
2 to the Court with a proposal since October 14th and I haven't
3 gotten anywhere with Mr. Sullivan's predecessor. So, to that
4 extent, it has not been resolved.

5 The other aspect of my pre-motion conference request,
6 your Honor, has to do with what I believe is clear and blatant
7 waiver of objections to my discovery request. There were
8 discussions had, I indicated a willingness to provide an
9 extension on the condition that we seek your Honor's approval
10 and get corresponding modification of the scheduling order
11 because the extension would, and has impeded the plaintiff from
12 doing the type of discovery she needs to do within the time
13 frame set forth in that order. So that issue also needs to be
14 addressed as well.

15 THE COURT: Mr. Sullivan?

16 MR. SULLIVAN: Thank you, your Honor. I appreciate
17 the time.

18 Ms. Parker has noted that I am recently on the case.
19 Actually I supervise Ms. Katsaros, who is primarily responsible
20 for the case as I noted, and unfortunately Ms. Katsaros has
21 been out of the office due to a family emergency which has
22 impeded our efforts here. Ms. Katsaros herself was recently
23 assigned the case when the prior ACC took a position at a prior
24 firm so that has held us up a little bit.

25 My understanding is that Ms. Katsaros had approached

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1 Ms. Parker to try and work out the concept of a discovery
2 extension but our thought at the time was that we would be able
3 to produce documents by mid-November and then the parties would
4 have an opportunity to evaluate whether we needed additional
5 time for depositions. The fact discovery ends December 31st so
6 we have collected a large volume of material from our clients
7 and we would, I am prepared to start responses. We had
8 represented to Ms. Parker that we had hoped to have them in by
9 November 15th in light of my colleague Ms. Katsaros' absence
10 beyond her control. I am going to ask your Honor for more
11 time. I did speak with plaintiff's counsel on an unrelated
12 issue unrelated to this conference earlier in the week and I
13 raised the possibility then but her thought at that point was
14 she wanted to have the conference and discuss these issues with
15 your Honor.

16 THE COURT: OK. So, Mr. Sullivan, let me ask, are you
17 guys or are you geared up now and sufficiently staffed up to
18 begin to engage in discovery earnestly.

19 MR. SULLIVAN: Yes, your Honor. And I don't mean to
20 misrepresent, I don't mean to misstate. We have been
21 diligently fulfilling our discovery obligations, it is just
22 that we are not in position at the moment to turn over
23 responses. We had hoped, as we said, as Ms. Parker had said,
24 we had hoped to have such responses out around mid-November.
25 That's not feasible at this point and I would respectfully

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1 request that we have until the end of December for that. I am
2 hopeful that my colleague will be back, certainly if she is out
3 for any extended period we will make arrangements that need to
4 be done to have the case properly defended in her absence.

5 THE COURT: Ms. Parker, do you have an objection to
6 that?

7 MS. PARKER: No, your Honor, I don't have an objection
8 but there are deadlines, three deadlines I would like to have
9 addressed and modified in light of this extensive deadline that
10 counsel is requesting. I certainly understand, I have been on
11 the other side where things happen and you just can't meet
12 those deadlines, but I just don't want to forego the
13 opportunity to deal with joinder, amendment, and other
14 subsequent deadlines.

15 So, my response is I'm agreeable to that provided
16 there are some modification of the deadlines in the scheduling
17 order to reflect that extension.

18 THE COURT: That sounds perfectly reasonable,
19 Ms. Parker, and I am sure that Mr. Sullivan will not object to
20 that.

21 MR. SULLIVAN: I agree, your Honor.

22 THE COURT: I had no doubt of that. Why don't you
23 folks do this. We will give Mr. Sullivan until the end of
24 December to comply with the document production and you folks
25 just add whatever time you feel you need to the other deadline

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1 so that Ms. Parker and her client are not prejudiced by
2 defendant's delay in getting those documents to her. I will
3 agree, I will sign off on whatever you folks reasonably agree
4 upon, and if that means extending the outside date of discovery
5 filed by another month or two, I am very happy to do that. I
6 am sure you can do it on consent and once you do that, present
7 it to me and I will so order it.

8 Does that sound like a plan, Ms. Parker?

9 MS. PARKER: It does.

10 Your Honor, what about the issue of waiver?

11 THE COURT: I think that, you know, we are not there
12 yet, Ms. Parker. I think the discovery plan was actually
13 executed in August, only three months have passed. You can
14 brief it but, you know, my inclination is to not impose
15 sanctions of that type in this case, not on the facts before
16 me. So, I don't think we should do that route. OK?

17 MS. PARKER: Thank you, your Honor.

18 THE COURT: OK. So then you two talk and if you could
19 get me a proposed amended discovery schedule by end of day
20 Monday, that would be appreciated.

21 Do you foresee any problem with that, Ms. Parker?

22 MS. PARKER: No, your Honor.

23 THE COURT: Mr. Sullivan?

24 MR. SULLIVAN: That should work, your Honor. My only
25 concern is I don't want to speak for Ms. Parker, I know that I

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1 won't be in the office tomorrow so assuming we will be able to
2 touch base on Monday.

3 THE COURT: That's why I gave you until Monday.

4 MR. SULLIVAN: I appreciate that.

5 THE COURT: OK?

6 MR. SULLIVAN: OK.

7 THE COURT: Very well. And Mr. Sullivan, I also just
8 want to note, whether Ms. Katsaros is back or not, I certainly
9 appreciate the exigencies of a family emergency but if she's
10 not around, then someone else has to be assigned to this and
11 someone that will be able to comply with the discovery schedule
12 that we will be entering by the end of day Monday. OK?

13 MR. SULLIVAN: Absolutely understood, your Honor.

14 Thank you very much.

15 THE COURT: OK. We are adjourned.

16 Everyone, please stay well.

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